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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/600,607	07/19/2000	MAARTEN KUIJPER	PHN16.643	5334

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EXAMINER

SCHECHTER, ANDREW M

ART UNIT

PAPER NUMBER

2871

DATE MAILED: 05/27/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

Advisory Action

Application No.

09/600,607

Applicant(s)

KUIJPER, MAARTEN

Examiner

Andrew Schechter

Art Unit

2871

--The MAILING DATE of this communication appears in the cover sheet with the correspondence address --

THE REPLY FILED 12 May 2003 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE. Therefore, further action by the applicant is required to avoid abandonment of this application. A proper reply to a final rejection under 37 CFR 1.113 may only be either: (1) a timely filed amendment which places the application in condition for allowance; (2) a timely filed Notice of Appeal (with appeal fee); or (3) a timely filed Request for Continued Examination (RCE) in compliance with 37 CFR 1.114.

PERIOD FOR REPLY [check either a) or b)]

- a) ☒ The period for reply expires 3 months from the mailing date of the final rejection.
- b) ☐ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection. ONLY CHECK THIS BOX WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

1. ☒ A Notice of Appeal was filed on 12 May 2003. Appellant's Brief must be filed within the period set forth in 37 CFR 1.192(a), or any extension thereof (37 CFR 1.191(d)), to avoid dismissal of the appeal.
2. ☐ The proposed amendment(s) will not be entered because:
- (a) ☐ they raise new issues that would require further consideration and/or search (see NOTE below);
- (b) ☐ they raise the issue of new matter (see Note below);
- (c) ☐ they are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
- (d) ☐ they present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: _____

3. ☐ Applicant's reply has overcome the following rejection(s): _____.
4. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
5. ☒ The a) ☐ affidavit, b) ☐ exhibit, or c) ☒ request for reconsideration has been considered but does NOT place the application in condition for allowance because: See Continuation Sheet.
6. ☐ The affidavit or exhibit will NOT be considered because it is not directed SOLELY to issues which were newly raised by the Examiner in the final rejection.
7. ☒ For purposes of Appeal, the proposed amendment(s) a) ☐ will not be entered or b) ☒ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.

The status of the claim(s) is (or will be) as follows:

Claim(s) allowed: _____.

Claim(s) objected to: _____.

Claim(s) rejected: 1-5, 7 and 8.

Claim(s) withdrawn from consideration: _____.

8. ☐ The proposed drawing correction filed on _____ is a) ☐ approved or b) ☐ disapproved by the Examiner.
9. ☐ Note the attached Information Disclosure Statement(s) (PTO-1449) Paper No(s). _____
10. ☒ Other: See Continuation Sheet

ROBERT H. KIM
SUPERVISOR, PATENT EXAMINER
TECHNOLOGY CENTER 2800

Continuation of 5. does NOT place the application in condition for allowance because:

The applicant argues that the inactive rubbing direction 35 is not relevant to the determination of the angle, so Fig. 2b is correct. This is not persuasive. The mid-plane director is determined by the inactive rubbing direction 35 and the active rubbing direction 29. The mid-plane director will therefore be to the southeast in the figure, while the angle is swept out toward the northeast. The objection to the figure is therefore maintained.

The applicant argues, regarding the rejection in view of Xu, that the angle could be zero ("there is no inherent reason why there should be any angle..." p.5). As discussed previously, however, since the "active rubbing direction" could be either of the two rubbing directions which are at 90 degrees to each other in the reference, if the angle were 0 with respect to one, it would be 90 with respect to the other. Since 90 degrees is "different from 0" as recited by the claim, this limitation is inherently met.

The applicant argues that the combination of Abileah with Xu (or with Kawata) is improper because Abileah teaches rotating the optical axis by 6-10 degrees while discussing an untilted axis, while the axes in Xu and Kawata are tilted. This is not persuasive to the examiner. The teaching in Abileah nowhere states that it should not be applied to a tilted optical director profile, nor does it appear inappropriate in that context, since even the present invention seems to rotate this axis for the same reason - to put the direction of highest contrast in a chosen direction (p. 3, lines 4-5 of specification).

The applicant argues that Xu and Kawata teach away from the claimed invention in some sense, since they define a tilt angle between the optical axis and the normal, not between a projection of the tilted optical axis and the active rubbing direction. This is not persuasive. First, both the present claimed invention and the references define a tilt angle between the optical axis and the normal. This is therefore not a teaching away. Second, the claimed invention recites an additional angle between the projection and the active rubbing direction, which the references do not discuss at all, hence they do not teach away from doing this. Third, this additional angle is either inherent (due to the way it is broadly defined as discussed above) or obvious in view of Abileah, for instance.

The arguments by the applicant are therefore not persuasive, and the previous rejections are sustained.

Continuation of 10. Other: Please note that the examiner has NOT acknowledged the receipt of certified copies of all the priority documents. As explicitly stated in the previous office action, NONE OF THESE have been received in this National Stage application from the International Bureau.

Andrew Schechter
20 May 2003